

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for)
Termination of Probation of:)

GLENN E. MILLER, M.D.)

Case No. 26-2011-220173

Physician's and Surgeon's)
Certificate No. G-29077)

OAH Case No. 2012040461

Petitioner.)
_____)

DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on February 15, 2013.

IT IS SO ORDERED January 16, 2013.

MEDICAL BOARD OF CALIFORNIA

By: Reginald Low
Reginald Low, M.D., Chair
Panel B

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DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition
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GLENN E. MILLER, M.D.

Physician and Surgeon Certificate No.
G 29077,

Petitioner.

Agency Case No. 26-2011-220173

OAH Case No. 2012040461

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge, Office of Administrative Hearings, heard this matter on November 29, 2012, in Los Angeles, California.

Lewin and Levin, and Mark Levin, represented Glenn E. Miller, M.D. (Petitioner).

Margaret J. Phe, Deputy Attorney General, represented the Attorney General of the State of California, pursuant to the provisions of Government Code section 11522.

The parties submitted the matter for decision on November 29, 2012.

FACTUAL FINDINGS

1. On December 21, 2011, Petitioner, an obstetrician and gynecologist, filed a petition for termination of probation.

2. The California Medical Board (Board) issued physician and surgeon certificate number G 29077 to Petitioner on March 31, 1975; it expires on February 28, 2014, unless renewed.

3. In March 1999, the Board's then-Executive Director filed an accusation against Petitioner alleging gross negligence, repeated negligent acts, the use of alcohol in a dangerous manner, the treatment of patients while intoxicated, dishonest/corrupt acts (falsifying a urine sample), failure to complete a treatment program, and the inability to

practice safely (*In the Matter of the Accusation Against Glenn E. Miller, M.D.*, agency case number 08-1996-70206). Petitioner requested an administrative hearing before an administrative law judge that was held on October 14, 1999. The administrative law judge in that matter found that Petitioner had a history of alcohol and drug abuse and a history of temporary sobriety and relapses. The Board adopted the administrative law judge's decision, concluding that the evidence established the allegations, except the inability to practice safely. The Board's decision, effective March 13, 2000, revoked Petitioner's medical license, but stayed the revocation and placed his license on probation for 10 years upon various terms and conditions, including abstaining from controlled substances and alcohol, submitting to biological fluid testing, and participating in the Board's then-available diversion program.

4. In 2004, the Board's then-Executive Director filed a noticed petition for an interim order to suspend Petitioner's license (*Thornton v. Miller*, agency case number D1-1996-70206). The petition alleged that Petitioner could not practice medicine competently and safely due to a mental and/or physical impairment. The factual basis for the allegation was that Petitioner violated the probationary condition requiring abstaining from the use of alcohol and that the Board's diversion program consequently expelled him from that program. The matter was heard before an administrative law judge on October 1, 2004. The administrative law judge in that matter issued the interim suspension order, dated October 4, 2004, suspending Petitioner's right to practice medicine pending a full administrative hearing.

5. On October 7, 2004, the Board's then-Executive Director filed a petition to revoke probation (*In the Matter of the Petition to Revoke Probation Against Glenn E. Miller, M.D.*, agency case number D1-1996-70206.) The petition alleged the same facts asserted in the petition for an interim suspension order. The matter was heard before an administrative law judge on December 30, 2004. The administrative law judge in that matter found Petitioner had tested positive for alcohol on three different occasions: August 9, 2001, June 11, 2003, and April 29, 2004, and that the diversion program had expelled Petitioner on or about June 16, 2004. The administrative law judge in that matter found cause to revoke Petitioner's probation in that he violated its terms and conditions. The Board revoked Petitioner's probation and lifted the stay of the original revocation, ultimately resulting in the revocation of Petitioner's medical license, effective February 15, 2005.

6. Petitioner filed a petition for reinstatement on March 11, 2008 (*In the Matter of the Petition for Reinstatement of Glenn E. Miller*, OAH case number 2009010276.). The matter was heard before an administrative law judge on March 27, 2009. The administrative law judge in that matter concluded that it would be consistent with the public interest to reinstate Petitioner's medical license and proposed that the Board place Petitioner's license on three years probation with various terms and conditions, including abstaining from alcohol and controlled substances, submitting to biological fluid testing, participating in group diversion sessions, and Alcoholics Anonymous (AA) meetings, and continued treatment with an addiction medicine specialist and a psychiatrist, among other terms. The Board non-adopted the administrative law judge's proposed decision and after considering

the parties' written and oral arguments, the Board similarly concluded that it would be consistent with the public interest to reinstate Petitioner's medical license. However, instead of a three-year probation, the Board placed Petitioner's license on seven years probation and added a requirement that Petitioner complete a clinical training program. The Board's decision was effective November 19, 2009.

7. Petitioner asserts that his 2005 revocation was beneficial, requiring him to seriously contemplate how to attain sobriety. Petitioner admitted to being addicted to prescription medication (Vicodin) in the past and alcohol since at least the early 1990s. He attempted to control his addictions several times with limited and temporary success. In 2005, when his license was revoked, he felt horrible and continued to abuse alcohol until January 2006, when he experienced what he termed an "epiphany" and made a stern commitment to abstain from drugs and alcohol. Petitioner has maintained his sobriety since January 27, 2006. He began attending seven to nine AA meetings per week and in 2008, he entered the Pacific Assistance Group (PAG), an alcohol and drug dependency counseling program. His participation in PAG has been helpful; he credits AA and PAG as significant sources of support for his sobriety and part of his overall lifestyle changes. He married in June 2006. He described his marriage as excellent and noted that his wife is another significant source of support.

8. Petitioner continues to attend AA meetings and PAG meetings. He has had the same AA sponsor for the past seven years.

9. Petitioner's AA sponsor testified and asserted that Petitioner made a complete transformation during the last seven years and that Petitioner has made a full commitment to his sobriety.

10. James Conway, MFT, PAG Area Monitor, testified and wrote a letter, dated December 14, 2011, in support of Petitioner. Conway has known Petitioner since 2000 when he was Petitioner's health group facilitator in the Board's diversion program, until June 2004, and thereafter as part of PAG beginning in 2008. Conway described Petitioner's participation in PAG as successful. He described Petitioner's support network as strong and his prognosis regarding his addictions as "good to excellent." Conway opined that Petitioner no longer requires probation.

11. Harvey Sternbach, M.D., testified. Sternbach is a Diplomate of the American Board of Psychiatry and Neurology. He has a private practice in West Los Angeles and is a Clinical Professor of Psychiatry at the UCLA Neuropsychiatric Institute. Sternbach treated Petitioner between 2002 and 2005 and sees him presently. Sternbach opines that Petitioner has no diagnosis that would make him incapable of practicing medicine. He further opines that Petitioner should continue to attend 12-step meetings, but he does not need to continue any particular treatment. Petitioner credits Sternbach with clarifying that he does not have bipolar disorder, as once diagnosed, but instead, he has attention-deficit, hyperactivity disorder. Sternbach has helped Petitioner gain an awareness of his condition and learn to deal with, and recognize, life's stressors.

12. Petitioner is in compliance with the terms and conditions of the current probation. He completed the 40-hour Physician Assessment and Clinical Education Program (PACE) intensive training program in obstetrics and gynecology in September 2010. This satisfied the Board's additional probationary condition, set forth in Factual Finding 6.

13. Petitioner regularly reads medical texts and journals; he believes he is currently as knowledgeable as when he took the obstetrics and gynecology boards.

14. Petitioner has had trouble finding employment in medicine due to his probationary status. In 2006, Petitioner went back to school to become a medical stenographer. Beginning March 7, 2011, Petitioner began practicing medicine at Green Cross Medical Clinic in Los Angeles, a small clinic. He finds that his practice is significantly limited in terms of the treatment he can provide there, and sees the termination of his probation as a means to find different, more expanded employment. If probation were terminated, he would seek to join a clinic or group. He does not plan to engage in a solo practice. Petitioner asserts that his own commitment to sobriety and his current network of support will ensure he remains sober and can safely return to the practice of medicine.

15. Since October 2011, Petitioner has also been employed by the Olive Medical Clinic in Huntington Park, California.

16. Brent J. Michael, M.D., wrote a letter in support of Petitioner. Michael is a Clinical Instructor at the UCLA Department of Family Medicine. He has been treating Petitioner since January 2009 and opines that Petitioner's prognosis for sobriety is excellent. Petitioner referred to Michael as an addictionologist. Michael attached his curriculum vitae to his letter and wrote, "Attached you will find my CV outlining my qualifications and experience in my fields of Family Practice and Addiction Medicine." However, Michael's curriculum vitae shows no significant qualifications or experience in addiction medicine with the exception of having completed nine continuing education credits for "Treatment of Opioid Dependence" in March 2002. Michael did not testify; his opinion regarding Petitioner's sobriety was given less than full weight.

17. Lawrence J. Grace, M.D. wrote a letter, dated November 8, 2011, in support of Petitioner. He has known Petitioner for 20 years and considers him a friend and mentor. Grace believes Petitioner will remain sober and is a competent and well-trained physician.

18. David Steinberg, M.D. wrote a letter, dated November 8, 2011, in support of Petitioner. He has known Petitioner for eight months and during that time, he has worked with Petitioner weekly at Green Cross Medical Clinic. Steinberg asserts that Petitioner is well-liked by patients, and appears to be completely recovered from his alcoholism.

19. Petitioner completed several continuing medical education courses: "Current Concepts in Diabetes," on August 3, 2010 (7.25 credits); "Current Clinical Issues in Primary Care," on April 27-30, 2011 (3 credits); "Autoimmune Diseases" and "Animal-Related Health Risks," both on June 25, 2012 (1 credit and 15 credits, respectively).

20. The California Attorney General contends Petitioner has shown insufficient rehabilitation to warrant the current probation's termination.

LEGAL CONCLUSIONS

1. Cause exists to deny Petitioner's petition for termination of probation, pursuant to Business and Professions Code section 2307, as set forth in Factual Findings 1-20, and Legal Conclusions 2-6.

2. Business and Professions Code section 2307 states that a person whose physician and surgeon certificate is placed on probation may petition for the termination of probation.

3. California Code of Regulations, title 16, section 1360.2 states that when considering a petition, the Board must evaluate evidence of rehabilitation submitted by Petitioner including: the nature and severity of the act(s) under consideration as grounds for denial; evidence of any act(s) committed subsequent to the act(s) under consideration as grounds for denial, that could also be considered as grounds for denial under Business and Professions Code section 480; the time that has elapsed since commission of the act(s); and evidence, if any, of rehabilitation submitted by Petitioner.

4. The standard of proof in this matter is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092; *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315.) Petitioner bears the burden of proof. (*Ibid.*) Petitioner did not meet his burden.

5. The nature and severity of Petitioner's underlying misconduct is significant. It is noted that, among other things, Petitioner originally treated patients while intoxicated and falsified a urine sample. His relapses thereafter showed an on-going addiction problem. In Petitioner's favor, he has been sober for almost seven years; significant time has passed. Further, Petitioner's latest efforts at maintaining his sobriety have been successful thus far. Petitioner's efforts are commendable; he appears to be well on the road to recovery. His rehabilitation, however, must be further assessed within the context of his probation. Petitioner has not engaged in efforts beyond the Board's current terms and conditions of probation. While he remains currently steadfast in his compliance, it cannot be concluded by clear and convincing evidence that his compliance will continue if the probationary constraints are lifted. Conway opined that probation was no longer necessary, and his opinion is fully credited here. Nevertheless, within the context of his severe transgressions related to his addictions, his relapses, and the Board's conclusion just three years ago that a seven-year probation was warranted, Conway's opinion and the opinions of Sternbach, Petitioner's AA sponsor, and the additional evidence supportive of Petitioner are insufficient to conclude that Petitioner no longer requires probation. Saliently, in 2009, when the Board decided that a seven-year probation was required, all of the pieces of Petitioner's sobriety

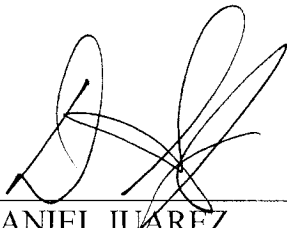
support network were already in place and the Board took those factors into account. Nonetheless, in its 2009 decision, the Board determined that seven years of oversight was appropriate. The evidence in the instant hearing did not offer significantly new or different information—other than establishing Petitioner’s continuing sobriety without further relapse—to warrant modifying the Board’s last decision in 2009.

6. Three years of compliance with the current terms and conditions of probation, despite his sobriety since 2006, is insufficient evidence of rehabilitation to warrant terminating probation under all of the facts in the record, and when balancing Petitioner’s right to practice medicine against the public’s safety. It is therefore appropriate to deny the petition.

ORDER

The Petition of Glenn E. Miller, M.D., for termination of probation is denied.

Dated: December 31, 2012



DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings